North Manchester Foundry, Inc. *and* United Steelworkers of America, Petitioner. Case 25–RC–9833

May 6, 1999

DECISION ON REVIEW AND ORDER

BY CHAIRMAN TRUESDALE AND MEMBERS HURTGEN AND BRAME

On February 19, 1999, the Regional Director for Region 25 directed an election in the above-captioned proceeding in which he found appropriate a unit of the Employer's production and maintenance employees and plant clericals, and directed that 13 pattern room, laboratory, and south core room employees be permitted to vote subject to challenge. Thereafter, in accordance with Section 102.67 of the Board's Rules and Regulations, the Employer filed a timely request for review of the Regional Director's Decision, contending that the Regional Director erred by affirming the hearing officer's refusal to permit the Employer to introduce evidence at the preelection hearing which would permit a determination on the unit placement of the pattern room, laboratory, and south core room employees, whom the Employer seeks to exclude. The Employer requested that the Board direct the Regional Director to reopen the preelection hearing for the purpose of fully litigating the issue of whether the disputed employee categories share a community of interest with the employees in the stipulated unit.[1]

The National Labor Relations Board has delegated its authority in this proceeding to a three-member panel, which has carefully considered the Employer's request for review of the Regional Director's Decision and Direction of Election. The request for review is granted as it raises substantial issues warranting review. For the reasons set forth below, we find that the Regional Director erred in refusing to permit the Employer to introduce certain witnesses at the scheduled preelection hearing.

The facts of this case are largely undisputed. The Petitioner sought to represent a unit of production and maintenance employees (main foundry), plant clerical, heat treatment, pattern shop, laboratory, and south core room employees. The Employer stipulated to a unit of production and maintenance employees and plant clericals, but disputed the inclusion of heat treatment, pattern shop, laboratory, and south core room employees, arguing that they do not share a community of interest with the stipulated unit. A hearing was held on February 11, 1999. During a break in the hearing, the Petitioner amended its petition to exclude the heat treatment employees. Shortly after the Petitioner's amendment, which occurred about halfway through the first day of the hearing, the hearing officer closed the record, reasoning that since the remaining disputed categories of employees constitute only 10 percent of the unit they could be permitted to vote subject to challenge.[2] At that time, one witness, David Boyd, the Employer's vice president and general manager, had testified about the job duties and working conditions of the heat treatment, south core room, pattern room, and laboratory employees. No evidence was heard regarding the production and maintenance employees.

In the Decision and Direction of Election, the Regional Director made some findings of fact with regard to the disputed employees, but concluded that it was not possible to determine whether they shared a community of interest with the production and maintenance employees. The Regional Director denied the Employer's motion to reopen the record to accept evidence relating to the production and maintenance employees, finding that proceeding to an election was the most efficient course of action, given the small number of employees in dispute and noting that the Employer would have the opportunity to litigate the placement of these employees after the election in the form of objections or challenges if their votes were found to be determinative.

The Employer argues that it was prepared to present witnesses and evidence at the hearing, but was improperly prevented from doing so by the hearing officer. As a result, according to the Employer, the only evidence on the record illustrates the lack of community of interest between the disputed categories and the production and maintenance employees. Thus, according to the Employer, the Regional Director directed an election for employees that may or may not constitute an appropriate unit. The Employer now seeks to have the record reopened for the purposes of completing its presentation of evidence on the unit placement issues.

Section (9)(c)(1) of the Act provides for "an appropriate preelection hearing" where, upon investigation of a representation petition, the Board has reasonable cause to believe that a question concerning representation affecting commerce exists. See *Angelica Healthcare Services Group,* 315 NLRB 1320 (1995). Section 101.20(c) of the Board's Rules and Regulations provides that the parties to a representation hearing should be afforded the opportunity to present their positions and produce the significant facts to support their contentions. Under Section 101.64(a), the hearing officer should "inquire fully into all matters in issue and necessary to obtain a full and complete record upon which the Board or the Regional Director may discharge their duties under section 9(c) of the Act."

In *Barre-National, Inc.*, 316 NLRB 877 (1995), the Board held that the preelection hearing did not meet the

[1] The election was conducted as scheduled on March 16, 1999, and the ballots were impounded. The Employer's motion to stay the election therefore is moot.

[2] There are 13 employees in the disputed classifications and 132 production and maintenance/plant clerical employees.

requirements of the Act, or of the Board's Rules[3] and Statements of Procedure,[4] where, as here, the hearing officer at the preelection hearing precluded the employer from presenting witnesses and introducing evidence in support of its contention that certain individuals were not eligible voters, and instead directed that resolution of that issue be deferred to the postelection challenge procedure. In *Barre*, however, the Board determined that under the particular circumstances of that case–i.e., that the employer had eliminated all but one of the contested positions–and given the employer's arguments, it would best effectuate the purposes of the Act to open and count the ballots cast in the election, and to entertain the employer's claims of prejudice only if raised as election objections.

Thus, under *Barre*, we conclude that the hearing officer did not provide the employer with a sufficient opportunity to present its evidence at the preelection hearing, as required under the Section 9(c) of the Act and the Board's Rules and Regulations. However, the particular factual circumstances that supported proceeding with the election in *Barre* are not present in the instant case.[5] Accordingly, we conclude that the case should be remanded to the Regional Director to reopen the hearing, at which time the parties may present witnesses and documentary evidence in support of their respective positions regarding the placement of the pattern room, laboratory, and south core room employees. Thereafter, the Regional Director should issue a supplemental decision as may be appropriate.

ORDER

The Regional Director's decision is reversed with respect to the issue on review, the Direction of Election is vacated, and the proceeding is remanded to the Regional Director for proceedings in conformity with this Decision on Review. The Employer's motion to stay the election is denied as moot.

[3] Sec. 102.66(a) of the Board's Rules. See also Sec. 102.64(a).
[4] Sec. 101.29(c) of the Board's Statements of Procedure.

[5] Because this case differs from *Barre,* Members Hurtgen and Brame find it unnecessary to pass on whether the majority was correct in directing that the ballots be counted there.